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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

PROTON ASSOCIATES LLC, and
SETH MILLER,

Plaintiffs,

v.

AVELO, INC.,

Defendant.

Case No. 2:25-cv-00856-CDS-BNW

**DECLARATION OF JONATHAN W.
FOUNTAIN IN SUPPORT OF
DEFENDANT AVELO, INC.'S MOTION
TO DISMISS COUNTS I AND III OF THE
FIRST AMENDED COMPLAINT FOR
LACK OF SUBJECT MATTER
JURISDICTION**

I, Jonathan W. Fountain, state the following:

1. I am over eighteen (18) years of age and am an attorney duly admitted to practice before all courts in the State of Nevada and am a Member of Howard & Howard Attorneys PLLC, counsel for Defendant and Counterclaimant Avelo, Inc. ("Avelo"). I make this declaration in support of Defendant Avelo Inc.'s Motion to Dismiss Counts I and III of the First Amended Complaint for Lack of Subject Matter Jurisdiction. I have personal knowledge of the facts set forth herein except as stated otherwise. If called to testify, I would competently testify to the

1 same.

2 2. On June 25, 2025, Plaintiffs' counsel, Jason Harrow, emailed me with several
3 procedural proposals. In one proposal, Mr. Harrow requested a 7-day extension of time for
4 Plaintiffs to respond to Avelo's pending TRO and preliminary injunction motions, indicating
5 Plaintiffs willingness "to agree now that the PI and TRO motions you filed continue to apply to
6 any counterclaims you may assert that are substantially similar to the two you initially asserted."
7 In another proposal, Mr. Harrow requested that Avelo agree to extend the deadline for Plaintiffs to
8 answer or otherwise respond to Avelo's counterclaims, or to any counterclaims it may reassert in
9 response to the First Amended Complaint, until 14 days following the Court's decision on Avelo's
10 pending TRO and preliminary injunction motions.

11 3. I responded to Mr. Harrow on June 26, 2025, with a counterproposal indicating
12 Avelo's willingness to agree to the proposed extension of time if Plaintiffs would agree not to use
13 the extension in support of a laches argument. The counterproposal I offered also requested that
14 Plaintiffs agree to stipulate to dismiss Counts I and III of the First Amended Complaint with
15 prejudice and without an award of attorneys' fees or costs made to any party. My email stated, in
16 part, as follows: "We are willing to stipulate that Plaintiffs need not answer the re-asserted
17 Counterclaims until 21 days after the Court decides the later of the TRO/PI motions if Plaintiffs
18 will stipulate to dismiss Counts 1 and 3 with prejudice and without an award of attorneys' fees or
19 costs to any party, with respect to those claims only, *as Avelo does not intend to pursue copyright*
20 *infringement or trademark dilution claims against Plaintiffs.*"

21 4. Mr. Harrow responded that same day rejecting the counterproposal I offered
22 stating, in part, that, Plaintiffs were "not interested in dismissing those counts at this time"

23 5. On June 27, 2026, I responded to Mr. Harrow, clarifying Avelo's position on the
24 requested extension of time for Plaintiffs to respond to the pending TRO and preliminary
25 injunction motions and proposing the parties "table" the discussion with respect to the dismissal of
26 Count I and III.

27 6. On June 27, 2025, Mr. Harrow responded to me with a proposed stipulation and
28 order for the extension of time.

1 7. To date, however, Plaintiffs have not agreed to the dismissal of Counts I and III
2 with prejudice despite the fact that Avelo has affirmatively stated its intent not to pursue those
3 claims.

4 8. True and accurate copies of each of the foregoing emails are attached hereto as
5 Exhibit A.

6 * * *

7 I hereby declare under penalty of perjury that the foregoing is true and correct.

8 Executed on: July 9, 2025

9 /s/ Jonathan W. Fountain

10 JONATHAN W. FOUNTAIN.

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